



# STATE OF INDIANA

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August 10, 2015

Mr. Gregory L. Cox  
46 Cravens Road  
Springfield, IL 62712

*Re: Formal Complaint 15-FC-202; Alleged Violation of the Access to Public Records Act by the Northeastern Wayne School Corporation*

Dear Mr. Cox,

This advisory opinion is in response to your formal complaint alleging the Northeastern Wayne School Corporation ("Corporation"), violated the Access to Public Records Act ("APRA") Ind. Code § 5-14-3-1 *et. seq.* The School has responded via counsel, Mr. Walt Chidester, Esq. His response is attached for your review. Pursuant to Ind. Code § 5-14-3-3, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on July 7, 2015.

## **BACKGROUND**

On May 22, 2015, you sent a request to the Northeastern Wayne School Corporation requesting documents and evidence used in the termination of a teacher. On May 28, the request was acknowledged by counsel for the Corporation. You were informed that the school system would need some time to compile the records. On June 4, you were told that 140 pages of information were responsive to your request. You sent payment on June 6. On June 18, counsel informed you that the previous estimate was incorrect and in reality there were only six pages of relevant information. In response, you attempted to request all 140 pages, which was denied.

On June 30, counsel responded to your complaint, stating that only six pages of the 140 pages were in the personnel file. The remaining pages are exempt under Ind. Code § 5-14-3-4 (b)(6), which gives the Corporation discretion to withhold records in certain cases. Counsel contends that the Corporation is only required to give information in the personnel file as it relates to disciplinary action taken, which is limited to the six pages.

## **ANALYSIS**

The public policy of the APRA states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” See Ind. Code § 5-14-3-1. The Northeastern Wayne School Corporation is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Corporation’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

Under Ind. Code § 5-14-3-4 (b)(6), an agency has the right to exercise its discretion to except from public release certain records which are “intra-agency or interagency advisory or deliberative materials, including material developed by a private contractor under a contract with a public agency, that are expressions of opinion or are of a speculative nature, and that are communicated for the purpose of decision making.” The Corporation claims the 134 pages fall within this category.

The Office of the Public Access Counselor is not a finder of fact, and can only opine based on the information given. Without access to all the pages cited, I cannot determine the propriety of the exemption cited. You have requested in your complaint that the Corporation be compelled to provide the entirety of the records you requested. Such an action is not within the power of the Public Access Counselor. If, after you have reviewed a copy of this opinion, you feel that you are still entitled to the records, the courts are available at your disposal. While a public agency is compelled to cooperate with this office in an investigation, they are not compelled to turn over their documentation for an *in camera* review. While I am certainly willing to do so, they have not invited me to inspect them. It simply appears that the Corporation spoke too soon in promising 140 pages. That does not necessarily waive any discretionary exemption to disclosure.

Moreover, pursuant to Ind. Code § 5-14-3-4(b)(8), the release of personnel files is discretionary except for:

- (A) the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;
- (B) information relating to the status of any formal charges against the employee; and
- (C) the factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged.

Without further information, it appears as if the Corporation has released the information that is responsive to your request that meets these criteria.

Regards,

A handwritten signature in black ink, appearing to be 'LHB', with a long, sweeping underline.

Luke H. Britt  
Public Access Counselor

Cc: Mr. Walt Chidester, Esq.  
Ms. Laura Blessing